Supreme Court, U.S.
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No. _____

IN THE
Supreme Court of the United States

OCTOBER TERM, 2006

Vincent G. Tecchio and Diane M. Tecchio,

Appellants,

v.

CITICORP MORTGAGE, INC.,

Appeal from the Supreme Court of New Jersey
Docket No. 59,538 and Docket No. 59535

PETITION FOR A WRIT OF CERTIORARI

Vincent Gerard Tecchio
For Appellants
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February, 2007

QUESTIONS PRESENTED

1. Whether the Fourteenth Amendment :

A. allows a state to enforce a void judgment obtained through extrinsic fraud;

B. allows a state to require proof of a meritorious defense as a prerequisite to relief from a void default judgment;

C. allows a state to place a time limit to vacate a void default judgment;

D. allows a state to permit new evidence to be placed on the record in an appeal of a collateral attack;

E. allows a state to refuse to give findings of fact and conclusions of law on new evidence on appeal without discovery;

2. Whether the Fourteenth Amendment allows a state appellate court to knowingly alter, change and manipulate the docket sheets to influence the outcome of a case.

PARTIES TO THE PROCEEDING

Appellants in this action are Vincent Gerard Tecchio, a living breathing man and Diane Marie Tecchio, a living breathing woman residing in Howell Township, Monmouth County, New Jersey. Named as defendants below was Citicorp Mortgage, Inc., a Delaware corporation, whose principle office location is in Missouri.

TABLE OF CONTENTS

QUESTIONS PRESENTED i

PARTIES TO THE PROCEEDING ii

LEGAL ARGUMENT iv

TABLE OF AUTHORITIES x

OPINIONS BELOW 1

JURISDICTION 1

CONSTITUTIONAL AND COURT RULES INVOLVED 5

STATEMENT 8

THE QUESTIONS PRESENTED ARE SUBSTANTIAL 11

CONCLUSION 25

APPENDICES 1a

LEGAL ARGUMENT

I

A. Respondents unlawfully obtained a void default judgment by swearing to the court that appellant did not answer the complaint even though they had the answer in their possession. This is extrinsic fraud. Extrinsic fraud is fraud or deception practiced upon a party by its adversary which has prevented the party from trying its case, or having a real contest of the subject matter of the suit in court. See 47 Am. Jur. 2d Judgments § 832 Extrinsic or intrinsic fraud In addition, if opposing counsel prevents, directly or indirectly, a fair trial on the merits, such action constitutes the type of fraud which will justify vacation of the judgment. See 47 Am Jur 2d. Judgments § 831 Fraud or Misrepresentation There is no question of the general doctrine that fraud vitiates the most solemn contracts, documents, and even judgments. U.S. v. Throckmorton 98 U.S. 61, 8 Otto 61, 25 L.Ed. 93 The action of respondents directly caused appellant to be deprived of his right to have meaningful access to the court to present his case.

B. The state court erred when they refused to vacate the void judgment due to the lack of meritorious defenses. This Court in Peralta v Heights Medical Center, Inc. 485 U.S. 80, (1988) and Coe v. Armour Fertilizer Works, 237 U.S. 413 (1915) said "Where a person has been deprived of property in a manner contrary to the most basic tenets of due process, "it is no answer to say that in his particular case due process of law would have led to the same result because he had no adequate defense upon the merits.". The right to relief

from a void judgment is absolute and not a matter within the court's discretion. Jordon v. Gilligan, C.A. 6th, 1974, 500 F.2d 701, certiorari denied 95 S.Ct. 1996, 421 U.S. 991, 44 L.Ed.2d 481. In addition, the moving party need not show a meritorious defense. Wise v. Herzog, 72 App.D.C. 335, 114 F.2d 486, 492; Schwarz v. Thomas, D.C. Cir., 222 F.2d 305 See Hicklin v. Edwards 226 F.2d 410, (8th Cir. 1955) See Wright & Miller 11 Fed. Prac. & Proc. Civ.2d § 2862 Void Judgment

C. The state court not only erred when they refused to vacate the void judgment due to their erroneous time limitation...they ruled contrary to long standing New Jersey case precedents. Void judgments are unenforceable. Berger v. Paterson Veterans Taxi Serv., 244 N.J.Super. 200, 205-06, 581 A.2d 1344 (App.Div.1990). See Sacks Realty Co., Inc. v. Shore, 276 N.J. Super. 621, 648 A.2d 736 (N.J.Super.A.D.,1994) "...a void judgment may be vacated at any time on motion of the party against whom it is entered. Collyer v McDonald, 123 N.J.L. 547, 10 A.2d 284; Gloucester City Trust Co. v Goodfellow, 121 N.J.L. 546, 3 A.2d 561; Westfield Trust Co. v Court of Common Pleas, 115 N.J.L. 86, 178 A. 546; Gimbal Bros. v Corcoran, 15 N.J. Misc. 538, 192 A. 715. See New Jersey Cash Credit Corp v Zaccaria 126 N.J.L. 334, 19 A.2d 448 (1941).

D. The state court erred when they allowed new evidence to be entered on the record in a collateral attack. Reeves v Jersey City et al 16 N.J. Super 231, 84 A.2d 42 (1951) "The validity of a judgment when collaterally attacked must be tried by an inspection of
the record alone and no other or further evidence on

the subject is admissible". See also Aramovich v Doles 244 Ind 658, 195 NE 2d 481, Ex Parte Higdon, 30 Wash 2d 546, 192 P.2d 744, Ray v Ray 330 MO 530, 50 SW 2d 142. See 47 Am. Jur. 2d Judgments § 938 As to Jurisdiction Citicorp Mortgage, Inc. submitted to the New Jersey Court, in support of their motion for entry of default judgment, a note that had an indorsement on it to a third party. The note that they entered on the record in support of their claim proved that they did not have standing to pursue the claim in their name. One hundred years ago this Court held,

> "The indorsement of the note and its delivery before maturity to the defendant by the payee of the note transferred its ownership to the defendant bank. This transfer also transferred, by operation of law, the ownership of the mortgage, which was collateral to the note. Such a mortgage has no separate existence, and when the note is paid the mortgage expires, as it cannot survive the debt which the note represents. Carpenter v. Longan, 16 Wall. 271, 21 L. ed.13; Burhans v. Hutcheson, 25 Kan. 625, 37 Am. Rep. 274; Mutual Ben. L. Ins. Co. v. Huntington, 57 Kan. 744, 48_Pac. 19;." See National Live Stock Bank v First Nat. Bank 203 U.S. 296, 27 S.Ct. 79, 51 L.Ed. 192 (1906)

Citicorp Mortgage, Inc. presented an assignment of a mortgage to the New Jersey Court but did not and could not produce the note which allegedly secured the mortgage lien. That is why the respondents attempted to enter new evidence on the record in this collateral attack. This attempt at placing new evidence on the record demonstrated that the respondents and the state court

both knew that the existing evidence on the record did not support the entry of judgment and demonstrated that the respondents did not have standing to pursue the action in the fir place. Why else would a party attempt to add evidence to an existing judgment unless that party knew that the evidence on the record did not support the judgment obtained and that they had no standing to pursue the action.

E. The state court erred when they refused to provide findings of facts and conclusions of law. This Court has repeatedly held, "The parties are entitled to know the findings and conclusions on all of the issues of fact, law, or discretion presented on the record." Butz v Economou 438 U.S. 478, 98 S.Ct. 2894, 57 L.Ed. 2d 895, (1978). See Federal Maritime Commission v South Carolina States Ports Authority 535 U.S. 743, 122 S.Ct. 1864, 152 L.Ed. 2d 962, (2002). New Jersey Court Rules mandate a judge provide finding of fact(s) and conclusions of law. New Jersey Court Rule, R. 1:7-4(a),

> "The court shall, by an opinion or memorandum decision, either written or oral, find the facts and state its conclusions of law thereon in all actions tried without a jury, on every motion decided by a written order..."

An appellate court is not in a good position to judge credibility and should not make new credibility findings. State v. Locurto, 157 N.J. 463, 471, 724 A.2d 234 (1999). The appellate court may not "weigh the evidence, assess the credibility of witnesses, or make conclusions about the evidence". State v. Barone, 147 N.J. 599, 615, 689 A.2d 132 (1997) Here the state court acted in a

manner wholly contrary to published case law precedent as they acted as a trial court and allowed new evidence on the record with no discovery, no evidentiary hearing and without providing findings of facts and conclusions of law.

Both D and E above are inexplicably intertwined to the next issue, which relates to the Appellate Court staff attorneys, case managers, court clerk, appellate court judges, the Presiding Judge of Administration of the Appellate Division, the acting director for the Administrative Office of the Courts and the New Jersey Attorney General's Office all having been noticed that the docket sheets and cases had been materially altered to influence the outcome of this case.

II

The state court erred when they unlawfully altered, changed and manipulated the docket sheets to influence the outcome of this case. Judicial employees, staff attorneys, case managers, Appellate Division Judges, including the Presiding Judge for Administration of the Appellate Division, the Director, Administrative Office of the Courts [of New Jersey] and the New Jersey Attorney General's Office were all noticed that alteration and tampering of public records took place at the Appellate Division. Motions filed under Case (Docket) Number A-005995-04T3 were knowingly filed under Case (Docket) Number A-001091-04T5. The New Jersey Legislature has spoken to this type of conduct and has enacted laws that make this conduct unlawful under the criminal code, New Jersey Statutes Title 2C. These include N.J.S.A. § 2C:28-7, Tampering

with public records or information; N.J.S.A. § 2C:28-6, Tampering with or fabricating physical evidence,; and N.J.S.A. § 2C:2-6, Liability for conduct of an other; complicity. These constitutional violations caused irreparable harm and damage to Mr. Tecchio. The action of placing motions filed in one case into the record of another case rendered the collateral attack on the judgment moot. By altering and manipulating the Case (Docket) Sheets the New Jersey Appellate Division created a false record that appeared to enable Citicorp to retain the void judgment.

TABLE OF AUTHORITIES

Cases **Page**

Agostino v. Chrein 2005 WL 4068789 (App.Div. 2006) 15
Aguchak v. Montgomery Ward. Inc.. 520 P.2d 1352 (Alaska 1974) 11
Alexander v. Hagedorn, 226 S.W.2d 996 (Tex. 1950) 9
Aramovich v Doles, 244 Ind 658, 195 NE 2d 481 (1964) ..... vi, 3
Barclay v. Florida, 436 U.S. 940 (1983) 14, 24
Bass v. Hoagland, 172 F.2d 205 (5th Cir.), *cert. denied*, 369 U.S. 816 (1949) 14, 17, 23
Berger v. Paterson Veterans Taxi Serv., 244 N.J.Super. 200, 205-06, 581 A.2d 1344 (App.Div.1990) v
Blum v Yaretsky 457 U.S. 991 (1982) 19
Bodde v. Connecticut, 401 U.S. 371 (1971..... 12
Bounds v Smith 430 U.S. 817 (1977) 22
Bryant, Inc. v. Walters, 493 So.2d 933 (Miss. 1986) 10, 17
Burhans v Hutcheson 25 Kan 625 ..... vi, 21
Butz v Economou 438 U.S. 478, (1978) ..... vii, 3
Carpenter v Longan 16 Wall 271, 21 L.Ed 13 ..... vi, 21
Chambers v Armontrout 16 F.3d 257, (8th Cir 1994) 17
Chavez v. County of Valencia, 521 P.2d 1154 (N.Mex. 1974) 17
Citibank, N.A. v. Russo, 334 N.J. Super. 346, 759 *A*.2d 865 (App.Div.2000) 14
Cleveland Board of Education v Loudermill 470

U.S. 532 (1985) 12
Coe v. Armour Fertilizer Works, 237 U.S. 413 (1915) .....iv, 12, 18, 24
Cohen v. California 403 U.S. 15 (1971) 5
Collyer v McDonald, 123 N.J.L. 547, 10 A.2d 284 v
Covington Indus. Inc. v. Resintex A.G., 629 F.2d 730, (C.A.2d, 1980) 17
Eagles v. United States, 329 U.S. 304 (1946) .. 12, 23
Ex Parte Higdon, 30 Wash 2d 546, 192 P.2d 744 ..... vi, 3, 9
Federal Maritime Commission v South Carolina States Ports Authority 535 U.S. 743 (2002) ..... vii, 4
Fehlhaber v. Fehlhaber, 681 F.2d 1015 (5th Cir. 1982) 14, 23
Gimbal Bros. v Corcoran, 15 N.J. Misc. 538, 192 A. 715 v
Gladestone Realtors v Village of Bellwood, 441 U.S. 91 (1979) 19
Gloucester City Trust Co. v Goodfellow, 121 N.J.L. 546, 3 A.2d 561 v
Gold Kist,.Inc. v. Laurinburg Oil Co., 756 F.2d 14(3rd Cir.1985)..... 10
Great American Reserve Ins. Co. v. San Antonio Plumbing Supply Co., 391 S.W.2d 41 (Tex. 1965) 5
Hanson v. Denckla, 357 U.S. 235 (1958) 11, 13, 22
Hengel v. Hyatt, 252 N.W.2d 105 (Minn. 1977) . 11
Hicklin v. Edwards 226 F.2d 410, (8th Cir. 1955) v
Honneus v. Donovan, 691 F.2d 1, (C.A. 1st, 1982) 17

Hospital Mtg. Group, Inc. v. Parque Ind. Rio Canas, 653 F.2d 54, (C.A.1st, 1981) 17
In re Marriage of Stroud, 631 V.2d 168 (Colo. 1981 ..... 10, 17
In Valley Forge Christian College v Americans United For Separation of Church and State 454 U.S. 464 (1982) 19, 20
Japan Line Ltd. v County of Los Angeles, 441 U.S. 434 5
Jordan. v. Gilligan, 500 F.2d 701 (6th Cir.), cert denied 421 U.S. 991 (1974) ..... v, 10
Kem v. Krueger, 626 S.W.2d 143 (Tex.Civ. App.-Fort Worth 1981) (*reh'g denied*) 5, 8
Klapprott v. United States, 335 U.S. 601, (1949), remand modified in 336 U.S. 942, (1949) 15
Kulko v. Superior Court of California, 436 U.S. 84 (1978) 11
Lassiter v. Department of Social Services of Durham City, 452 U.S. 18 (1981) 14, 23
Lemothe v. Cimbalista, 286 S.W.2d 681 (Tex. Cir. App.-San Antonio 1951) (writ *ref'*d) 8
Lujan v Defenders of Wildlife 504 U.S. 555 (1992) 19
M & D Associates v. Mandara 366 N.J.Super. 341, 841 A.2d 441 (App.Div. 2004) 14, 15, 16
Marder v. Realty Const. Co. 84 N.J.Super. 313, 202 A.2d 175 (A.D. 1964) 14, 16
Mathews v. Eldridge, 424 U.S. 319 (1976) 13
McEwen v. Harrison, 845 S.W.2d 707 (Tex. 1961) 8, 9
Middleton v. Murf, 689 S.W.2d 212 (Tex. 1985) 9

Morgan v. Atwell, 569 P.2d 529 (Okla. App. 1977) 11
Mutual Ben. L. Ins. Co. V Huntington 57 Kan 744, 48 Pac. 19 ..... vi, 21
National Exchange Bank of Tiffin, Ohio v. Wiley, 195 U.S. 257 (1904) 11, 21
National Live Stock Bank v First Nat. Bank 203 U.S. 296 (1906) ..... vi, 21
New Jersey Cash Credit Corp v Zaccaria 126 N.J.L. 334, 19 A.2d 448 (1941) v
Peralta v Heights Medical Cente., Inc. 485 U.S. 80, (1988) .....iv, 15, 16, 24
Raine v. First Western Bank, 362 So.2d 846 (Ala. 1978) 11
Ray v Ray 330 Mo. 530, 50 SW.2d 142 (1932) ..... vi, 3,
Reeves v Jersey City et al 16 N.J. Super. 231, 84 A.2d 42 (1951) ..... v, 3,
Sacks Realty Co., Inc. v. Shore, 276 N.J. Super. 621, 648 A.2d 736 (N.J.Super.A.D., 1994) v
Shammas v. Shammas 9 N.J. 321, 88 A.2d 204 (1952) 15, 16
Schwarz v. Thomas, 222 F.2d 305 (D.C. Cir. 1955) ..... v, 11
Shannon v. Norman Block, Inc., 256 A.2d 214 (R.I. 1969) 11
Simer v Rios 661 F.2d 655 (7th Cir. 1981) 17
Stanley v Illinois 405 U.S. 645 (1972) 24
State v. Barone, 147 N.J. 599, 615, 689 A.2d 132 (1997) viii
State v. Locurto, 157 N.J. 463, 471, 724 A.2d 234 (1999) vii

Swift v Bank of Washington 52 C.C.A. 339,
114 Fed. 643 21
Texas Industries, Inc. v. Sanchez, 525 S.*W*.2d 870
(Tex. 1975) 9
Thomas P. Gonzalez Corp. v. Consejo Nacional
De Production De Costa Rica, 614 F.2d 1247
(9th Cir. 1980) 10, 17, 18
United National Insurance Co. V Waterfront
N.Y. Realty Corp. 907 F.Supp. 663
(S.D.N.Y. 1995) 17
U.S. v. Throckmorton 98 U.S. 61,
8 Otto 61, 25 L.Ed. 93..... iv
V.T.A. Inc. V Airco, Inc. 597 F.2d 220 (10th Cir.
1979) 16
Warth v Seldin 422 U.S. at 499 (1975) 20
Westfield Trust Co. v Court of Common
Pleas, 115 N.J.L. 86, 178 A. 546 v
Whitmore v Arkansas 495 U.S. 149 (1990) 20
Wilford v. Sigmund Eisner Company, 13 N.J.
Super 27, 80 A.2d 222 (App.Div. 1951) 15
Wise v. Herzog, 72 App.D.C. 335,
114 F.2d 486, 492 v
Wisconsin v. Constantineau, 400 U.S. 433
(1971) 13, 18
World-Wide Volkswagon Corporation v. Woodson,
444 U.S. 286 (1980) 13, 22

Other Authorities:

U.S. Const Amend. XIV 5, 18
F.R.C.P. 60(b) 16
15 U.S.C. § 1592 9
28 U.S.C. § 1257 5

N.J.C.R. 1:6-6 7
N.J.C.R. 1:7-4 ..... vii, 4, 7
N.J.C.R. 4:43-3 ..... 5, 15, 16
N.J.C.R. 4:50-1 .....1, 2, 3, 5, 13, 14, 15, 16, 19
N.J.C.R. 4:50-2 ..... 6, 14, 15
N.J.C.R. 4:50-3 6
N.J.C.R. 4:64-1 ..... 6, 9
N.J.C.R. 4:64-2 7

Federal Rules of Civil Procedure Rule 60(b).... 17
11 Wright & Miller Fed. Prac. & Proc.
§ 2872 (1973) ..... v, 17
N.J.S.A.§ 2C:2-6, Liability for conduct
of an other; complicity 23
N.J.S.A. § 2C:28-6, Tampering with or
fabricating physical evidence 23
N.J.S.A. § 2C:28-7, Tampering with public
records or information 23
N.J.S.A. § 46: 8B-21 7

47 Am. Jur. 2d Judgments § 832 Extrinsic
or intrinsic fraud iv
47 Am Jur 2d. Judgments § 831 Fraud or
Misrepresentation iv
47 Am. Jur. 2d Judgments § 938 As
to Jurisdiction vi

OPINIONS BELOW

The New Jersey Supreme Court refused appellants application for rehearing of the denial of certification on November 21, 2006. See App. A *infra* at 1a and 1b. The opinion of the Appellate Court affirming the decision of the trial court in Case No. A-1091-04T5 was unpublished. See App. B *infra* at 2a. (N.J. Supreme Court Docket No. 59,535) (referred to as case number (1) one) The Appellate Court made no determination in Case No. A-005995-04T3. (N.J. Supreme Court Docket No. 59,538) (Case No. A-1091-04T5 - referred to as case number (2) two - this appeal was an appeal of an independent action - a collateral attack on the judgment) The Appellate Court merely attached to the opinion of Case No. A-1091-04T5, Case No. A-005995-04T3. The sole issue on appeal in Case No. A-005995-04T3 (N.J. Supreme Court Docket No. 59,538) was did the respondents have standing to pursue the action against the appellants. The Appellate Court chose not adjudicate the issue of standing and did not issue a ruling on the question of standing. The decisions of the trial court were given orally at the hearings.

JURISDICTION

Pursuant to New Jersey Court Rules, a motion to vacate the default judgment was brought under Rule 4:50-1(d) in both cases. In the first case the motion to vacate the judgment was brought before the court to show that appellants had answered the complaint and that the respondents attorneys had filed an affidavit with the court swearing that appellants had not answered, plead or defended in this action. See App. C *infra* at 3a and

b. The motion was denied stating that defendant [Mr. Tecchio] utterly failed to demonstrate meritorious defenses requiring his motion to be denied. See App D *infra* at 4a. The trial court judge failed to rule on whether the appellant had answered the complaint. Tecchio complained that his due process rights were being violated. An appeal was taken to the New Jersey Appellate Division. The Appellate Division affirmed for substantially the reason that the trial court stated; no meritorious defenses. Then in 2004 a motion was made once again to vacate the judgment under New Jersey Court Rule 4:50-1. This time the trial court finally ruled that appellants had answered the complaint but denied the motion stating that there were no meritorious defenses filed and that appellants were out of time to vacate the judgment. On a motion for reconsideration Mr. Tecchio raised the issue that it was a violation of his due process rights to have a default judgment entered when an answer was given. The trial court judge refused to provide an explanation as to why Mr. Tecchio's due process rights were abrogated and why, the trial court judge, would not vacate the judgment. The same constitutional issues were raised in the appeal to the Appellate Division and to the New Jersey Supreme Court. Both Courts denied relief.

In the second case, a collateral attack was made on the judgment based on the trial court not having subject matter jurisdiction to hear the matter because the respondents did not have any evidence to support the judgment. *It was later learned that Citicorp Mortgage, Inc. had sold and delivered the note to a third party.* Citicorp Mortgage Inc. did not at any time deny that they had sold and transferred the note to the third

party. *The endorsement on the note clearly and unequivocally demonstrates that the note was negotiated, sold and delivered to a third party.* Citicorp failed to inform the trial court that they were not the owner and were not the holder of the said note and that they had no rights, title and beneficial interest in the note. Instead they fraudulently maintained throughout the litigation that they were the owner and holder of the said note. Citicorp failed to produce the original note even though they had ample opportunity to do so. Then on appeal Citicorp sought to have new evidence entered on the record in a collateral attack. Tecchio raised constitutional issues on appeal. These constitutional violations attached to multiple issues. The appellate court allowed new evidence on the record in a collateral attack. There is not one single published case in the entire federal court reporters and in any of the state court reporters where the court has allowed the introduction of new evidence on a collateral attack. In fact all of the published cases hold opposite to this. "The validity of a judgment when collaterally attacked must be tried by an inspection of the record alone and no other or further evidence on the subject is admissible" See *Reeves v Jersey City et al,* 16 N.J. Super 231, 84 A.2d 42 (1951); *Aramovich v Doles,* 244 Ind 658, 195 NE 2d 481, (1964); *Ray v Ray,* 330 MO 530, 50 Sw 2d 142 (1932); *Ex Parte Higdon,* 30 Wash 2d 546, 192 P.2d 744

The Appellate Court refused to provide findings of fact and conclusions of law. "The parties are entitled to know the findings and conclusions on all of the issues of fact, law, or discretion presented on the record." citing *Butz v Economou* 438 U.S. 478, 98 S.Ct. 2894, 57 L.Ed. 2d

895, (1978). See *Federal Maritime Commission v South Carolina States Ports Authority* 535 U.S. 743, 122 S.Ct. 1864, 152 L.Ed. 2d 962, (2002). New Jersey Court Rules mandate a judge provide finding of fact(s) and conclusions of law. New Jersey Court Rule, R. 1:7-4(a) provides:

> "The court shall, by an opinion or memorandum decision, either written or oral, find the facts and state its conclusions of law thereon in all actions tried without a jury, on every motion decided by a written order that is appealable as of right..."

Mr. Tecchio has a right to know the courts findings of facts and the courts conclusions of law. The court refused to provide findings and conclusions.

The Appellate Court also violated Mr. Tecchio's right to fundamental due process when they knowingly altered and manipulated the docket sheets. The motion to add new evidence to the record was made under Case (docket) No. A-005995-04T3. Judicial employees at the New Jersey Appellate Division including the Court Clerk knowingly altered and manipulated the docket sheets and filed the motion under a different case, Case (docket) No. A-001091-04T5. Mr. Tecchio fought this constitutional violation as well criminal activity by the court personnel through motions to correct the record, motions for reconsideration, filing a complaint with Judge Edwin Stern, Presiding Judge for Administration, Appellate Division filing a complaint with the New Jersey Attorney General's Office, Office of Criminal Justice, Mr. Joseph Trapp, and filing a complaint with Judge Phillip Carchman, Acting Director, Administrative

Office of the Courts. No action was taken to rectify the alteration of the Docket Sheet by any court administrator once the alteration of the Case (docket) Sheets was known. The New Jersey Supreme Court had full knowledge of the constitutional violations and refused to hear either of the two cases. Jurisdiction of this Court is invoked under 28 U.S.C. 1257. (*See Japan Line Ltd v County of Los Angeles*, 441 U.S. 434 (1979); *Cohen v California*, 403 U.S. 15 (1971)).

CONSTITUTIONAL AND COURT RULES INVOLVED

U. S. Constitution Amendment XIV, Section 1, provides:

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Rule 4:43-3, Default. Setting Aside Default

> For good cause shown, the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with R. 4:50.

Rule 4:50-1, Relief from Judgment or Order - Grounds of Motion - in pertinent part;

> On motion, with briefs, and upon such terms as are

just, the court may relieve a party or the party's legal representative from a final judgment or order for the following reasons: (a) mistake, inadvertence, surprise, or excusable neglect; (c) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (d) the judgment or order is void; or (f) any other reason justifying relief from the operation of the judgment or order.

Rule 4:50-2, Relief from Judgment or Order - Time of Motion

The motion shall be made within a reasonable time, and for reasons (a), (b) and (c) of R. 4:50-1 not more than one year after the judgment, order or proceeding was entered or taken.

Rule 4:50-3, Relief from Judgment or Order - Effect of Motion - in pertinent part;

A motion under R. 4:50 does not... **limit the power of a court to set aside a judgment, order or proceeding for fraud upon the court or to entertain an independent action to relieve a party from a judgment, order or proceeding.**

R. 4:64-1, Uncontested Judgment: Foreclosures Other Than In Rem Tax Foreclosures

(d) Procedure to Enter Judgment.
Defaulting parties shall be noticed only if application for final judgment is not made within six months of the entry of default.

R. 4:64-2, Proof

> The moving party shall produce the original mortgage, evidence of indebtedness, claim of lien (N.J.S.A. 46: 8B-21), and any other original document upon which the claim is based. In lieu of an original document, the moving party may produce a copy of a recorded or filed document, certified as a true copy by the recording or filing officer or by a New Jersey attorney, or a copy of an original document, if unfiled or unrecorded, certified as a true copy by a New Jersey attorney.

R. 1:6-6, Evidence on Motions; Affidavits

> If a motion is based on facts not appearing of record, or not judicially noticeable, the court may hear it on affidavits made on personal knowledge, setting forth only facts which are admissible in evidence to which the affiant is competent to testify and which may have annexed thereto certified copies of all papers or parts thereof referred to therein. The court may direct the affiant to submit to cross-examination...

R. 1:7-4,. Findings by the Court in Non-jury Trials and on Motions

> (a) Required Findings. **The court shall,** by an opinion or memorandum decision, either written or oral, **find the facts and state its conclusions of law thereon in all actions tried without a jury,** on every motion decided by a written order that is appealable, and also as required by R. 3:29.

STATEMENT

This case arises out of Mr. Tecchio's attempt to obtain relief from a default judgment entered against him in May of 1998.

During the period of time relevant to this appeal Mr. Tecchio found numerous due process violations and defects in the judgment that demonstrated the judgment was void.

In July of 1997 Citicorp Mortgage, Inc. brought suit for foreclosure in the Superior Court of New Jersey. Mr. Tecchio was finally served with a summons and complaint. The summons ordered Mr. Tecchio to send an answer to Citicorp's attorneys. Mr. Tecchio sent an answer to the attorneys within the allotted time.

In March of 1998, without notice to Mr. Tecchio, Citicorp's attorneys filed a notice of default with the foreclosure court and swore under penalty of perjury that Mr. Tecchio did not answer, plead or defend. On May 20, 1998 a default judgment was entered against Mr. Tecchio. As allowed by New Jersey Court Rule R. 4:64-1 Mr. Tecchio was not noticed that a default judgment had been entered against him. Presumably the New Jersey Supreme Court does not deem it necessary to notice a party that judgment has been rendered against them.

On or about May 8, 2000 a sheriff's sale was held. Citicorp Mortgage, Inc. was the successful bidder at the sale. On September 28, 2000 the Monmouth County Sheriff, assisted by the Howell Township

New Jersey Police Department seized Mr. Tecchio's real property in satisfaction of the default judgment.

In April of 1998 Mr. Tecchio brought a motion to vacate the default judgment under Trial Court Docket No. F-12473-97 to the Chancery division in the Superior Court of Monmouth County, New Jersey. (Case number one) In this proceeding Tecchio argued that he had answered the complaint and that Citicorp Mortgage's attorneys obtained a default judgment even though he had answered the complaint. The trial court judge denied the motion stating that no meritorious defenses where given thus the motion had to be denied under New Jersey law. Mr. Tecchio cited due process violations in the obtaining of the default judgment and that he did not need to demonstrate meritorious defenses due to the constitutional violations present in obtaining the default judgment. The motion and the motion for rehearing were all denied.

On July 23, 2004, Mr. Tecchio brought a motion to vacate the default judgment under Docket No. F-12473-97 to the Chancery division in the Superior Court of Monmouth County, New Jersey. (Case number one) In this proceeding, Mr. Tecchio contended that his answer of September of 1997 constituted a dispute to the debt under the Fair Debt Collections Practices Act (15 USC 1692 et seq.,). The Court denied the relief while finding Tecchio had answered the complaint and requested discovery. The court ruled that as a matter of law, Tecchio was required to prove meritorious defenses to the underlying foreclosure in order to obtain relief from the default judgment. The court also held that to much time had passed and there was nothing more that the

court could do. Tecchio sought a rehearing and presented the following evidence to the court; 1. Tecchio had answered the complaint yet the attorneys for Citicorp had filed false affidavits with the court saying that Tecchio did not answer, 2. there was no motion to strike the answer filed, 3. there was no finding that the answer was not a valid answer and 4. that the judgment was void due to being obtained by extrinsic fraud and due process violations. The trial court judge denied the motion for rehearing. An appeal was taken. (Case No. A-1091-04T5) The Appellate Division affirmed for the same reasons.

On June 10, 2005, Mr. Tecchio brought a motion to vacate the default judgment via a collateral attack on the judgment under Docket No. MON-C-149-00 for lack of standing. (Case number two) Citicorp Mortgage, Inc. knowingly withheld from the court and from Mr. Tecchio the fact that they had sold the note (the evidence of debt) which would have supported the lien (mortgage) they purported to hold. Mr. Tecchio brought before the court documents that Citicorp Mortgage, Inc. had filed into the court record which revealed 1. an endorsement on the promissory note to a third party and 2. a mortgage pooling series identification number on the assignment of the mortgage. Mr. Tecchio also brought to court, the 8-K and the 10-K filing statements, obtained from the Securities and Exchange Commission in Washington D.C. which revealed the mortgage pooling series identification number that was on the assignment of mortgage. The trial court judge denied this motion. The Judge stated, "I have read everything that you have filed five or six times." The Judge then told me that

he could not see how they [Citicorp] did not have standing. An appeal was taken on the standing issue. (Case No. A-005995-04T3) *The Appellate Court never issued a ruling on the issue of standing in this case.* The Court merely appended the case number (Case No. A-005995-04T3) to the opinion dated June 19, 2006 which ruled on Case No. A-001091-04T5. Both of these actions were appealed to the New Jersey Supreme Court. The New Jersey Supreme Court entered an order denying rehearing on November 21, 2006.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

This appeal presents important questions concerning the constitutionality of certain aspects of New Jersey law as they relate to obtaining and vacating default judgments. More specifically, it raises the question of whether a state can condition relief from a default judgment obtained by extrinsic fraud and due process violations on the presence of a meritorious defense to the claim underlying the judgment. New Jersey apparently is unique among the states in imposing such a requirement; its rule is contrary to the Federal Rules and the rules of several other jurisdictions. The Federal Rules, and the rules of other states, allow for the vacation of a void judgment (one obtained by due process violations *i.e.*, one obtained by extrinsic fraud, a judgment obtained without standing) at any time and irrespective of whether the defendant has a meritorious defense. Mr. Tecchio submits that these rules embody the constitutional imperative: no state may enforce a void judgment obtained by extrinsic fraud, nor may a state enforce and retain a void

judgment obtained by a party who has not suffered an injury and damage, nor may it condition an individual's right to secure relief from a judgment obtained in the way described above. This case calls upon the Court to exercise its preeminent authority to guarantee that legislative and judicial pronouncements of the states conform with the Constitution.

This appeal also presents additional important questions concerning the constitutionality of certain aspects of New Jersey law as they relate to obtaining and vacating default judgments. More specifically, it raises the question of whether a state can grant a judgment to a party who lacked standing to pursue an action and whether a state can maintain a suit where there is no case or controversy between the parties. This case calls upon the Court to exercise its preeminent authority to guarantee that legislative and judicial pronouncements of the states conform with the Constitution.

A third question presented by this appeal is whether a court's numerous violations of procedures and state law designed to protect parties and insure fairness in the adjudication of a case constitutes a denial of due process. This Court recognized in *Eagles v. United States*, 329 U.S. 304, 314 (1946), that flagrant violations of procedural requirements which result in an unfair hearing can render the judgment subject to collateral attack. This case calls upon the Court to determine whether lack of standing, the use of extrinsic fraud to obtain a judgment, the conduct of judicial employees of altering, changing and manipulating of the courts docket sheet and the

failure to provide notice at every stage of a proceeding is procedural error of sufficient severity to render the ensuing judgment void.

1. Mr. Tecchio has always contented that he had answered the complaint and that Citicorp Mortgage never produced competent evidence that would prove their claim against him. Tecchio after extensive research found that Citicorp Mortgage had sold the note when they assigned the mortgage and that Citicorp Mortgage had concealed this information from the court at trial. At the time of the hearing on June 10, 2005 Citicorp did not deny that they had sold the note and been paid in full on it.

New Jersey law provides for either a direct attack on a judgment or for an independent action (a collateral attack) on a judgment. As a general rule, a party seeking post judgment relief must plead and prove the following elements:

Relief from Judgment or Order - R. 4:50-1.
Grounds of Motion in pertinent part;

(a) mistake, inadvertence, surprise, or excusable neglect;
(b) newly discovered evidence which would probably alter the judgment or order and which by due diligence could not have been discovered in time to move for a new trial under R. 4:49;
(c) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;

(d) the judgment or order is void;
or
(f) any other reason justifying relief from the operation of the judgment or order.

New Jersey Courts have added several requirements that do not appear in the rules:

Generally a defendant seeking to reopen a default judgment must show that he has a meritorious defense.

Marder v. Realty Const. Co. 84 N.J.Super. 313, 202 A.2d 175 (A.D. 1964)

"the motion to vacate must be brought within a *reasonable time* if the judgment is void under *R.* 4:50-1(d). *R.* 4:50-2; Citibank, N.A. v. Russo, 334 *N.J.Super.* 346, 353, 759 *A.*2d 865 (App.Div.2000); *see also* Pressler, *Current N.J. Court Rules,* Comments *R.* 4:50-2 (Gann).."
M & D Associates v. Mandara 366 N.J.Super. 341, 841 A.2d 441 (App.Div. 2004)

Here the court imposes a requirement that a motion to vacate a void judgment be brought before a court within a reasonable time if the judgment is void under *R.* 4:50-1(d).

Another line of cases hold differently:

The rule simplifies the procedure and permits the exercise of the power to open a final judgment, for the reasons specified in subdivisions (1), (2) and

(3), upon motion made within a reasonable time not more than one year after the entry of the final judgment (see, however, as to this time limit, *Klapprott v. United States*, 335 U.S. 601, 69 S.Ct. 384, 93 L.Ed. 266 (1949), remand modified in 336 U.S. 942, 69 S.Ct. 384, 93 L.Ed. 1099 (1949), and *Wilford v. Sigmund Eisner Company*, 13 N.J. Super 27, 80 A.2d 222 (App.Div. 1951) and, for the reasons specified in subdivisions (4), (5) and (6) and for fraud upon the court, **without limitation as to time.**

Shammas v. Shammas 9 N.J. 321, 88 A.2d 204 (1952)

In cases where a defendant asserts defects where due process may be implicated, further showings, such as that of a meritorious defense, may not be required. Pressler, *Current N.J. Court Rules,* comment on *R.* 4:43-3 (2006) (citing *Peralta v Heights Medical Center, Inc.* 485 U.S. 80, 108 S.Ct. 896, 99 L.Ed.2d 75 (1988))

Agostino v. Chrein 2005 WL 4068789 (App.Div. 2006)

New Jersey courts have demonstrated inconsistent application of fundamental maxims of law and the requirements in place by court rules, by statute and by judicial decree regarding the vacation of default judgments. One case holds that if a judgment is void under R. 4:50-1(d) that the motion must be made in a reasonable time. See *M & D Associates v. Mandara*, 366 N.J.Super. 341, 841 A.2d 441 (App. Div. 2004)

Another case holds that if the judgment is void there is no limitation of time. See *Shammas v. Shammas* 9 N.J. 321, 88 A.2d 204 (1952). Then the courts have held that to open a default judgment meritorious defenses are required. See *Marder v. Realty Const. Co.* 84 N.J. Super. 313, 202 A.2d 175 (A.D. 1964) But the Appellate Division held that in cases where a defendant asserts defects where due process may be implicated, further showings, such as that of a meritorious defense, may not be required. Pressler, *Current N.J. Court Rules,* comment on *R.* 4:43-3 (2006) The Appellate Division cited the United States Supreme Court's holding in *Peralta v Heights Medical Center, Inc.* 485 U.S. 80, 108 S.Ct. 896, 99 L.Ed.2d 75 (1988)

Thus, in New Jersey, a defendant who has suffered a constitutional injury, a due process violation, depending on which line of cases the judge relies on, might only be heard if he presents meritorious defense to the underlying claim and he brings his motion to vacate within a one year period of time. This is what the New Jersey Superior Court, Appellate Division held in the instant case, and in this the New Jersey Supreme Court found no reversible error.

In contrast, the Federal Rules, and the rules of several other jurisdictions, impose no limitations on a defendant's ability to obtain relief from a void judgment. Constitutional errors for concluding that a judgment is void for purposes of Rule 60 (b) (4) is if the judgment was entered in violation of due process. *V.T.A., Inc. v. Airco, Inc.*, 597 F.2d 220, 225 (10th Cir. 1979); *Bass v. Hoagland,* 172 F.2d 205, 209 (5th

Cir.), *cert. denied*, 338 U.S. 816, 70 S.Ct. 57, 94 L.Ed. 494 (1949); 11 C. Wright & A. Miller , Federal Practice and Procedure s 2872 (1973). *Simer v Rios*, 661 F.2d 655, (7th Cir 1981) The right to relief from a void judgment is absolute and not a matter within the court's discretion. Once a judgment is found void the Court must vacate it, there is no discretion. *Chambers v. Armontrout*, C.A. 8th, 1994, 16 F.3d 257, 260,; *Honneus v. Donovan*, C.A. 1st, 1982, 691 F.2d 1, 2,; *Hospital Mtg. Group, Inc. v. Parque Ind. Rio Canas*, C.A.1st, 1981, 653 F.2d 54, 56,; *Covington Indus. Inc. v. Resintex A.G.*, C.A.2d, 1980, 629 F.2d 730, 733,; *Thos. P. Gonzalez Corp. v. Consejo Nacional*, C.A. 9th, 1980, 614 F.2d 1247, 1256. All citing Wright & Miller 11 Fed. Prac. & Proc. Civ.2d § 2862. *United National Insurance Co. v Waterfront N.Y. Realty Corp.* 907 F.Supp. 663 (S.D.N.Y. 1995) This rule apparently prevails throughout the country, and it has been explicitly adopted by several courts. *See, e.g., Chavez v. County of Valencia,* 521 P.2d 1154, 1158 (N. Mex. 1974) (no discretion on the part of a trial court but to grant relief where there is no subject matter jurisdiction); *In re Marriage of Stroud*, 631 P.2d 168, 170 n.5 (Colo. 1981) (a judgment is either void or not and relief must be afforded accordingly); *Bryant, Inv. v. Walters*, 493 So.2d 933, 937 (Miss. 1986) (void judgments must be vacated).

Moreover, several courts have explicitly held that proof of a meritorious defense is not a prerequisite to obtaining relief from a void judgment. For example, the Ninth Circuit held in *Thomas P. Gonzalez Corp. v. Consejo Nadanal De Production De Costa Rica,* 614 F.2d 1247, 1256 (9th Cir. 1980):

> [T]here [is no] requirement, as there usually is when default judgments are attacked under Rule 60(b), that the moving party show that he has a meritorious defense. Either a judgment is void or it is valid. Determining which it is may well present a difficult question, but when that question is resolved, the court must act accordingly.

As this Court stated in *Coe v Armour Fertilizer Works*, 237 U.S. 413 (1915):

> To one who protests against the taking of his property without due process of law, it is no answer to say that in his particular case due process of law would have led to the same result because he had no adequate defense on the merits.

This is no less true today than it was ninety two years ago, and accordingly, the fact that Mr. Tecchio did not state meritorious defenses does not lessen his right to have the void default judgment vacated. Not only did Mr. Tecchio have property at stake, but he had a liberty interest as well in protecting his "good name, reputation, honour [and] integrity." See *Wisconsin v Constantineau*, 400 U.S. 433 (1971)

Of course there is no constitutional requirement that New Jersey conform its rules of practice and procedure to the federal rules or the rules of the various other states unless, as here, those rules themselves prescribe the constitutional minima. In this connection, the Fourteenth Amendment does proscribe that New Jersey Courts can maintain actions without a case and controversy by parties without standing and

their attorneys who use extrinsic fraud to obtain judgments they are not lawfully entitled to. It is this proscription, properly embodied in the Federal Rules and the rules of other states, that New Jersey Court Rule 4:50-1(d) infringes. For this reason, New Jersey's imposition of a "meritorious defense" requirement as a prerequisite to vacating a void judgment cannot withstand constitutional scrutiny.

It is self-evident that the Fourteenth Amendment forbids the exercise of judicial power of a court to a party that has not suffered an injury. It is axiomatic that judicial power may not be exercised unless the plaintiff shows "that he personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant." *Gladstone, Realtors v. Village of Bellwood,* 441 U.S. 91, 99, 99 S.Ct. 1601, 1607, 60 L.Ed.2d 66 (1979). See *Blum v. Yaretsky,* 457 U.S. 991, 102 S.Ct. 2777, 73 L.Ed.2d 534 (1982) *In Valley Forge Christian College v. Americans United For Separation of Church and State, Inc.,* 454 U.S. 464, 102 S.Ct. 752, 70 L.Ed.2d 700 (1982) this court said:

> "The exercise of judicial power, which can so profoundly affect the lives, liberty, and property of those to whom it extends, is therefore restricted to litigants who can show "injury in fact" resulting from the action which they seek to have the court adjudicate."

In *Lujan v Defenders of Wildlife,* 504 U.S. 555, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992) this Court stated the three irreducible minimum for standing:

> 1. The plaintiff must have suffered and injury in a personal and individual way;

2. The injury must be caused by the action of the defendant;

3. The injury will be redressed by a favorable decision.

In *Valley Forge Christian College v. Americans United For Separation of Church and State, Inc.,* 454 U.S. 464, 102 S.Ct. 752, 70 L.Ed.2d 700 (1982) this court said:

> Beyond the constitutional requirements, the federal judiciary has also adhered to a set of prudential principles that bear on the question of standing. Thus, this Court has held that "the plaintiff generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties." *Warth v. Seldin*, 422 U.S., at 499, 95 S.Ct., at 2205.

In *Whitmore v. Arkansas*, 495 U.S. 149, 154-55, 110 S.Ct. 1717, 109 L.Ed.2d 135 (1990) this Court said that if a party lacked standing, the Court lacked subject matter jurisdiction to entertain a request for relief. In the collateral attack on the judgment (Case 2) Mr. Tecchio brought to the courts attention that Citicorp Mortgage, Inc. did not own and hold a certain note (evidence of a debt) when the action was filed and when the motion for the entry of judgment was granted. Citicorp Mortgage, Inc presumably owned a mortgage (a lien) but had no evidence of debt (no note) to support that lien. This court held,

> But we are of opinion that that court had not authority or jurisdiction to render judgment against the obligors if the National Exchange Bank had in fact sold the note, and ceased, before the commencement of that suit, to own

it or to be entitled to receive the proceeds to its own use. It was, in such case, in legal effect, a personal judgment without service of process upon the defendants, and without their appearance in person or by an authorized attorney. The proceedings were wanting in due process of law. The obligors never consented to judgment by confession in favor of one who was not the owner of the note or entitled to receive its proceeds, and the warrant of attorney cannot be held to have authorized such a confession.

See *National Exchange Bank of Tiffin, Ohio v Wiley*, 195 U.S. 257 (1904)

"The indorsement of the note and its delivery before maturity to the defendant by the payee of the note transferred its ownership to the defendant bank. This transfer also transferred, by operation of law, the ownership of the mortgage, which was collateral to the note. Such a mortgage has no separate existence, and when the note is paid the mortgage expires, as it cannot survive the debt which the note represents. *Carpenter v. Longan*, 16 Wall. 271, 21 L. ed. 13; *Burhans v. Hutcheson*, 25 Kan. 625, 37 Am. Rep. 274; *Mutual Ben. L. Ins. Co. v. Huntington*, 57 Kan. 744, 48 Pac. 19; *Swift v. Bank of Washington*, 52 C. C. A. 339, 114 Fed. 643."

See *National Live Stock Bank v First Nat. Bank*, 203 U.S. 296, 27 S.Ct. 79, 51 L.Ed. 192 (1906)

Finally, a judgment rendered in violation of the Fourteenth Amendment to the Constitution is void.

World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 296, 291 (1980). It is not entitled to enforcement in the rendering state or any other state. *Hanson* v. *Denckla*, 857 U.S. at 250. Since the Constitution precludes a state from enforcing any such judgment, a *fortiori* no state can place conditions on an individual's right to obtain relief from such a judgment.

2. The number and breadth of procedural irregularities in the default judgment also constitutes a denial of Mr. Tecchio's due process rights. At the hearing to vacate the default judgment (of April 1998) Mr. Tecchio presented evidence that he had answered the complaint and the trial court refused to rule on whether or not there was an answer. Not until July of 2004 did the trial court rule that Mr. Tecchio had answered the complaint and asked for discovery. The results of the hearing of April 1998 clearly violated Mr. Tecchio's due process rights and precluded him from ever having a meaningful hearing on the merits. Mr. Tecchio was deprived of meaningful access to the court. In *Bounds v. Smith,* 430 U.S. 817, 97 S.Ct. 1491, 52 L.Ed.2d 72 (1977) this court reasoned that the fundamental constitutional right of due process included meaningful access to the courts. It is also fundamental to the principle of meaningful access to the courts and to due process that the court read the papers and rule on the papers as presented by the parties.

In this case judicial employees, staff attorneys, case managers, Appellate Division Judges, including the Presiding Judge for Administration of the Appellate Division, the Director, Administrative Office of the Courts [of New Jersey] and the New Jersey Attorney General's Office were all noticed that alteration and

tampering of public records took place at the Appellate Division. Motions filed under Case (Docket) Number A-005995-04T3 were knowingly filed under Case (Docket) Number A-001091-04T5. This constitutional violation caused irreparable harm and damage to Mr. Tecchio. The action of placing motions filed in one case into the record of another case rendered the collateral attack on the judgment moot. By altering and manipulating the Case (Docket) Sheets the New Jersey Appellate Division created a false record that appeared to enable Citicorp to retain the void judgment.

The New Jersey Legislature has spoken to this action and has enacted laws that make this conduct unlawful under the criminal code New Jersey Statutes Title 2C. These include § 2C:2-6, Liability for_conduct of an other; complicity,; § 2C:28-6, Tampering with or fabricating physical evidence,; and § 2C:28-7, Tampering with public records or information

This court has held that procedural irregularities will result in the denial of due process where the defects are so unfair as to deprive the proceedings of vitality. *Eagles v. United States*, 329 U.S. at 314. Similarly, Federal circuit courts have recognized that a combination of procedural errors can reach a level that renders a judgment void for want of due process. *Bass v. Hoagland*, 172 F.2d 205, 209 (5th Cir.), cert. denied, 338 U.S. 816 (1949); *Fehlhaber v. Fehlhaber*, 681 F.2d 1015, 1027 (5th Cir. 1982). This Court has consistently stated that the Fourteenth Amendment requires judicial proceedings to be conducted in a fundamentally fair manner. *Lassiter v. Department of Social Service of Durham City*, 452 U.S. 18, 33 (1981). Again, in 1983, this Court stated that errors in state law can rise to a level where they deprive an individual litigant of his federal

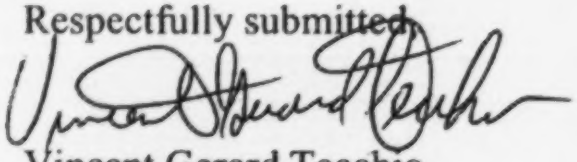
constitutional rights. *Barclay v. Florida*, 436 U.S. 940, 956 (1983). In *Stanley v. Illinois*, 405 U.S. 645, 656-657, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972) this court said, "The concept of procedural due process, is, by its very nature, designed to prevent the virtues of administrative convenience, speed and efficiency from trampling under the rights of citizens. Mr. Tecchio had no notice that the New Jersey Superior Court - Appellate Division was taking administrative action that was never published in the New Jersey Court Rules or published and enacted by the New Jersey Legislature.

Certainly the proceedings complained of here cannot be characterized as fundamentally fair. Virtually at every turn Mr. Tecchio met with resistence to his motions to vacate the judgment by the courts applying incorrect standards and requirements for him to overcome. Due process virtually never existed at any time during the entire course of this litigation. The Courts did not recognize that Citicorp did not have standing to pursue the action, the courts did not rule on the extrinsic fraud used in obtaining the default judgment, the courts conveniently overlooked the fact that judicial employees altered and manipulated the record and the docket sheet to influence the outcome of the appeal, and the court improperly demanded meritorious defenses which are in direct conflict with the holdings of this Court in both *Coe v Armour Fertilizer Works*, 237 U.S. 413, 424, 35 S.Ct. 625, 629, 59 L.Ed.2d 1027, 1032 and *Peralta v Heights Medical Center, Inc.* 485 U.S. 80, 108 S.Ct. 896, 99 L.Ed.2d 75 (1988). The courts also imposed a time limit for Mr. Tecchio to vacate this void judgment when the same cases cited above impose no time constraint when there are constitutional violations.

Conclusion

For the foregoing reasons, probable jurisdiction should be noted and the petition for the writ of certiorari should be granted.

Respectfully submitted,



Vincent Gerard Tecchio
P.O. Box 787
Howell, New Jersey 07731
732-267-2985

Dated: April 30, 2007

Appendix A
SUPREME COURT OF NEW JERSEY
M-385 September Term 2006
59,835

CITICORP MORTGAGE, INC.,
Plaintiff,

v.

VINCENT G. TECCHIO, and
DIANE TECCHIO, HIS WIFE,
Defendants-Movants.

ORDER

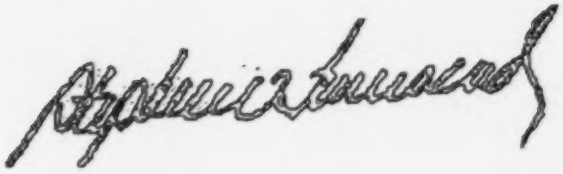
This matter having been duly presented to the Court, it is ORDERED that the motion for reconsideration of the petition for certification is denied.

WITNESS, the Honorable James R. Zazzali, Chief Justice, at Trenton, this 17th day of November, 2006.

Filed - November 21, 2006

16

CLERK OF THE SUPREME COURT
OF NEW JERSEY



CLERK OF THE SUPREME COURT

A-1091-04

Appendix A

SUPREME COURT OF NEW JERSEY
M-385 September Term 2006
59,838

VINCENT G. TECCHIO, and
DIANE MARIE TECCHIO, HIS WIFE,
Plaintiffs-Movants,

v.

CITICORP MORTGAGE, INC.,
Defendant.

ORDER

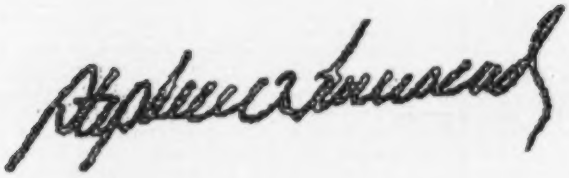
This matter having been duly presented to the Court, it is ORDERED that the motion for reconsideration of the petition for certification is denied.

WITNESS, the Honorable James R. Zazzali, Chief Justice, at Trenton, this 17th day of November, 2006.

Filed - November 21, 2006

2 b

CLERK OF THE SUPREME COURT
OF NEW JERSEY



CLERK OF THE SUPREME COURT

A-5995-04

16

Appendix B

Superior Court of New Jersey,
Appellate Division.
CITICORP MORTGAGE, INC., Plaintiff-Respondent,
v.
Vincent Gerard TECCHIO and Diane Marie Tecchio, his wife, Defendants-Appellants.
Vincent Gerard Tecchio and Diane Marie Tecchio, his wife, Plaintiffs-Appellants,
v.
Citicorp Mortgage, Inc., Defendant-Respondent.

Argued May 24, 2006.
Decided June 19, 2006.

SYNOPSIS

On appeal from the Superior Court of New Jersey, Chancery Division, Monmouth County, F-12473-97 (A-1091-04T5) and C-149-00 (A-5995-04T3).

Vincent Gerard Tecchio, appellant, argued the cause pro se.

Gregory R. McCloskey argued the cause for respondent.

Before Judges WEISSBARD and SAPP-

PETERSON.

PER CURIAM.

These are appeals of two orders entered July 23, 2004 and June 10, 2005 by the trial court arising out of summary judgment motions granted in favor of plaintiff/defendant Citicorp Mortgage, Inc., and against defendant/plaintiff Vincent Gerard Tecchio and his spouse, Diane Marie Tecchio. [FN1] The appeals were argued back-to-back and we dispose of them together in this opinion. We affirm.

> FN1. Diane Marie Tecchio is not a party to these appeals.

The underlying facts surrounding this litigation date back to July 28, 1997, when Citicorp commenced a foreclosure action against the Tecchios for residential property owned by the Tecchios located in Monmouth County, New Jersey. They were duly served with a copy of the summons and complaint, as well as a copy of the amended complaint. On September 30, 1997, Tecchio sent a letter to Citicorp's attorney, which Tecchio claims was his answer and request for documents.

> Dear Sirs,
> Enclosed please find my answer and

3b

request for documents.

I do not admit or deny any claim made against me.
I request that you send me a copy of the documentation of your claim. Please include in this documentation the following information:

1. All sworn and unsworn affidavits by any and all persons and individuals involved,
2. Documents used as Prima Facie evidence,
3. All proofs of claims,
4. All Certifications by any and all persons and individuals involved,
5. All statements of any and all parties involved.

The summons did not reflect when and where to appear. Please forward that information with the above referenced material.

Thereafter, Tecchio filed two bankruptcy petitions from which Citicorp was granted relief from the automatic stay. Default judgment was entered against Tecchio on May 21, 1998. On March 22, 1999, Tecchio moved to vacate the default judgment, arguing that his September 30, 1997, letter was an answer to the complaint and he was

therefore denied due process. The motion was denied on April 16, 1999.

Tecchio filed a notice of appeal. While that appeal was pending, he filed yet another bankruptcy petition. Once again, Citicorp was granted relief from the automatic stay. In an unpublished opinion, we affirmed the trial court decision. *Citicorp Mortgage, Inc. v. Tecchio,* No. A-5893-98T3 (App.Div. March 17, 2000). Tecchio then commenced an action to enjoin the sheriff's sale and vacate the final judgment of foreclosure. The matter was dismissed on May 8, 2000. The sheriff's sale was held and the Tecchios were evicted from the premises on September 28, 2000, a little more than three years after he was first served with the foreclosure summons and complaint.

On September 24, 2001, Tecchio commenced an action in federal court against Citicorp's foreclosure attorney, claiming that counsel violated the Fair Debt Collection Practices Act (**FDCPA**), 15 *U.S.C.A.* § § 1692-1692o. That action was dismissed on April 8, 2002.

On April 30, 2004, Tecchio filed a motion to vacate the May 21, 1998, final judgment of foreclosure, which is the subject of this appeal. In that motion, Tecchio alleged

Citicorp violated the **FDCPA.** The motion was denied on July 23, 2004. The trial judge found that the motion, brought six years after the entry of the foreclosure judgment, "can be considered an unreasonable period of time, but it doesn't really make a difference, because I've already ruled that the Fair Debt Collection Act has not been violated." In addition, the judge found that Citicorp complied with the notice requirements mandated under 15 *U.S.C.A.* § 1692g. This statute imposes specific requirements upon debt collection once a debtor disputes the debt:

> *2 (b) Disputed debts. If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) of this section that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or a copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector.

The judge specifically found:

If the debt collector obtains and sends a copy of a judgment to the consumer for

such debt, the verification requirement has been satisfied and the debt collector can resume his collection efforts. *See* [Scott T. Tross, *New Jersey Foreclosure Law & Practice* at 59 (quoting 15 *U.S.C.A.* § § 1692b, g)].

It is in this case Citicorp, in this Court's opinion, provided Mr. Tecchio with the necessary information several times. The information was provided to him in an affidavit validating and proving the debt in response to the defendant's Chapter 7 filing; in a notice under the Fair Foreclosure Act; in a proof of claim filed in response to Mr. Tecchio's Chapter 13 bankruptcy filing; and also on a court order dated April 16th 1999.

The purpose of the validation notice is to insure that consumers are advised of their right to dispute the debt. To effectuate that purpose the validation notice must clearly and effectively advise the consumer that he has a right to dispute the debt, which extends for 30 days following receipt of the notice.

A validation notice is deemed to effectively convey the information if the least sophisticated consumer measured objectively understands it. [*See* Tross, *supra,* at 59].

While Mr. Tecchio may not have been represented at the start of the proceeding, that cannot be used as an excused [sic] to avoid proper legal procedure. As stated here, the purpose of the validation notice is to clearly convey to the least sophisticated consumer the right to dispute the debt. Mr. Tecchio was sophisticated enough to request certain information necessary, legal documentation within his letter and the information provided to him from the bank provided him reasonable information to allow him to understand the nature of his debt, and his ability to contest it.

Therefore, because Mr. Tecchio was provided with several documents satisfying the validation notice, his motion to deny, motion denying insufficient response to the--his motion should be denied as the Court believes that there was sufficient response by Citicorp.

Thereafter, Tecchio filed two motions for reconsideration of the court's July 24, 2004,

decision. The trial court denied both motions. The present appeal followed.

While the present appeal was pending, on May 3, 2005, Tecchio filed another motion

with the trial court as a collateral attack on the default judgment of foreclosure entered May 21, 1998, based upon the ground that Citicorp lacked standing to commence the foreclosure action because it had assigned the note and mortgage to Security Pacific Trust, which in turn reassigned the mortgage to Citicorp without delivering the note.

On June 10, 2005, following oral argument, the motion was denied. The judge found that "[a]lthough a copy of the note was submitted in the foreclosure action as opposed to the original it is clear that Citicorp acted appropriately and in accordance with the rules of court to the final judgment." The judge concluded that even if the judgment was vacated, "it does not appear that Mr. Tecchio has a legitimate defense to the foreclosure." Tecchio filed an appeal of this decision.

In these two appeals, Tecchio argues: (1) the judgment was obtained by extrinsic fraud and is void; (2) the judgment was obtained in violation of due process and is void; (3)

when judgment is obtained by extrinsic fraud and without due process, no meritorious defenses are necessary; (4) when an application to vacate a void judgment is made, the court has no discretion but to set it aside; (5) a void judgment is not entitled to

the respect accorded to and is attended by none of the consequences afforded to a valid judgment and cannot affect, impair or create rights, nor can any rights be based thereon; (6) the answer requested specific information concerning the validity of the debt pursuant to the Federal Fair Debt Collection Practices Act; (7) the mortgage follows the note; (8) without standing, the court has no power to proceed; (9) assignment and negotiation; (10) due process violations.

After carefully reviewing the record in the light of the written and oral arguments advanced by the parties, we conclude the issues presented by plaintiff are without sufficient merit to warrant extensive discussion in this opinion, *R.* 2:11-3(e)(1)(A) and (E), and we affirm substantially for the reasons expressed by the trial judge in his oral opinions delivered on July 23 and October 22, 2004, and June 10, 2005.

Affirmed.

1 C

Appendix C

Answer to the
Summons and Complaint
September 30, 1997

Fein, Such. Kahn
& Shepard, Esq.
7 Century Drive Suite 201
Parsippany, New Jersey 07054

Certified Mail
Z 373 817 187

Re: Citicorp Mortgage v Tecchio
Docket No. F-12473-97
Answer to Summons

September 30, 1997

Dear Sirs,

Enclosed please find my answer and request for documents.

I request that you send me a copy of the documentation of your claim. Please include in this documentation the following information.

2 C

1. All sworn and unsworn affidavits by any and all persons and individuals involved,
2. Documents used as Prima Facie evidence,
3. All proofs of claims,
4. All Certifications by any and all persons and individuals involved,
5. All statements of any and all parties involved.

The summons did not reflect when and where to appear. Please forward that information with the above referenced material.

Sincerely,
/s/ Vincent G. Tecchio

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Appendix C

Request and Certification of Default
March 12, 1998

Fein, Such. Kahn & Shepard, Esq.
7 Century Drive Suite 201
Parsippany, New Jersey 07054
(973) 538-4700 **Filed - March 12, 1998**

Re: Citicorp Mortgage v Tecchio
Docket No. F-12473-97
Request and Certification of Default

To: Clerk of the Superior Court of New Jersey

You will please enter the default of the following defendants herein:

VINCENT G. TECCHIO
DIANE TECCHIO, his wife
STATE OF NEW JERSEY
UNITED STATES OF AMERICA

for failure to plead or otherwise defend as provided by the rules of Civil Practice of the Superior Court.

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Fein, Such. Kahn & Shepard, P.C.
Attorneys for Plaintiff

By: /s/ Charles A. Gioino

Certification of Default

Charles A. Gioino, does hereby certify:

1. I am an attorney of the law firm of Fein, Such. Kahn & Shepard, P.C. attorneys for the plaintiff in the above entitled action, and am in charge of the prosecution of said action.

2. The following Defendants were served on the date set forth after their names with a copy of the Summons and Complaint, (and Amendment to Complaint, if any):

VINCENT G. TECCHIO
Summons and Complaint and Amendment
8/29/97
DIANE TECCHIO, his wife;
Summons and Complaint and Amendment
8/29/97
STATE OF NEW JERSEY

5c

Summons and Complaint and Amendment
8/28/97
UNITED STATES OF AMERICA
Summons and Complaint and Amendment — WASH. 09/02/97, NWK 09/08/97

as appears from the Sheriff's return of service of said summons; Affidavits of Mailing, (and Acknowledgment of Service, if any); that the time within which the above named Defendants may answer or otherwise move as to the Complaint (and Amendment to Complaint, if any) has expired; that the above named Defendants have not answered or otherwise moved, and that the time for the above Defendants to answer or otherwise move has not been extended.

3. I hereby certify that the foregoing statements made by me are true; I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: March 4, 1998

/s/ Charles A. Gioino
Charles A. Gioino

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Appendix D

Order of Trial Court Denying
Motion to Vacate Judgment
April 16, 1999

UPON THE MOTION and an order submitted by the above named party, Vincent Tecchio, and after reviewing all pleadings and for good cause shown,

Ordered, that the motion to vacate the order for final judgment is denied.*

/s/ Clarkson S. Fisher
Judge, Superior Court

So Ordered
April 16, 1999

* Notwithstanding the question of whether defendant's September 30, 1997 letter to

plaintiff's counsel, (which neither admitted nor denied the claim) should have been considered as a responsive pleading, defendant's current motion utterly fails to demonstrate the existence of a meritorious defense, requiring denial of the motion.

Petition for Rehearing Brief Unavailable for Filming at this Time